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## THE INCREASING NEED FOR ARBITRATION IN ACTION SPORTS

By  
Rachel Bires \*

The popularity of Action Sports has steadily been rising since the introduction of widely-televised events, especially with events such as the ESPN X-Games. Joe Tomlinson, an author who has written several books on the topic of extreme sports, lists nine air sports, eighteen land sports, and fifteen water sports that are considered “extreme sports,” now dubbed “action sports,” in his book entitled, “Extreme Sports.”<sup>1</sup> Due to the amount of sports that are considered Action Sports, particularly the sports that are included in the ESPN X-Games, there is a growing need for arbitration for all parties involved. These action sports, especially Skateboarding and Bicycle Motocross (“BMX”), which are increasing in popularity both in the United States and internationally, would benefit from arbitral clauses in various aspects of their sports, including endorsement contracts and in the dispute resolution clauses of the bylaws of their governing bodies for recognition by the United States Olympic Committee (“USOC”) for potential Olympic competition.

### I. INTRODUCTION

The world of action sports is growing in popularity. With big name athletes serving as role models, such as Tony Hawk, Dave Mirra, Mat Hoffman, Shaun White, and Ryan Sheckler, more and more children and young adults are being drawn into the sports in the role as either a spectator, or a participant. Compared to other sports, action sports are unique; in Skateboarding and BMX, athletes as young as thirteen are competing as professionals, and amateur athletes in these sports are starting at even younger ages. Arbitration and arbitration

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<sup>1</sup> JOE TOMLINSON, EXTREME SPORTS (Carlton Publishing Group 2002).

provisions are a viable and important option for agreements that will benefit these sports, the athletes that compete, and the companies that invest in both these sports and the athletes. Arbitration agreements in the governing bodies of these sports, in the competitions in which the athletes compete, and in the endorsement agreements these athletes contract into, would benefit both the sports and the athletes involved.

## II. ISSUES IN SPORTS ARBITRATION

### A. *Endorsement Contracts*

Many action sports athletes have received lucrative endorsement contracts with major companies. Shaun White, a professional skateboarder and snowboarder, has or has had endorsement deals with large companies such as Burton Snowboards, Target, Red Bull, Oakley, Inc, and Hewlett-Packard.<sup>2</sup> There are also many other athletes who may be less known to the general public that have endorsement contracts with major equipment, clothing, shoe, and energy drink companies. Additionally, other, non-traditional, companies are investing their money in action sports athletes. For example, Skullcandy, a headphone company, sponsors several Skateboarders and BMX riders.<sup>3</sup>

Many of these athletes may not be privy to the legalities involved in their endorsement contract; rather, these athletes may be entrusting these agreements with management companies or agents. While there are no cases involving action sports athletes and their endorsement agreements, there are some cases involving athletes in other sports that may shed some light on issues involving action sports athletes and their endorsement contracts.

Track and Field athletes are similar to action sports athletes in that they sometimes compete individually, even against their own 'teammates,' and also

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<sup>2</sup> Shaun White Official Website, <http://www.shaunwhite.com> (last visited November 21, 2010).

<sup>3</sup> Skull Candy, <http://www.skullcandy.com> (last visited Nov. 21, 2010).

enter into endorsement contracts individually. In *Hicks v. HSInternational Sports Management, Inc.*,<sup>4</sup> the United States District Court for the District of Oregon held that if all of the claims brought by a Plaintiff fall within an agreement to arbitrate, the court must grant the motion to compel arbitration, particularly when the Plaintiff claims that the entire agreement is void; that claim is for the arbitrator to decide, not the courts.<sup>5</sup> Kevin Hicks, a track and field athlete, signed with HSInternational Sports Management, Inc. (“HSI”) to act as his agent.<sup>6</sup> In the agreement, Hicks agreed to pay HSI fifteen percent of the “money received in connection with fees, bonuses, and prize money in exchange for HSI’s best efforts to negotiate his contracts and manage his racing career.”<sup>7</sup> Hicks entered into a four and a half year contract with Nike, which was to begin on July 1, 2005.<sup>8</sup> The contract provided for reductions in Hicks’ base salary if he failed to participate in a requisite number of events or if he “failed to attain certain results” in these events.<sup>9</sup> When HSI failed to enter Hicks into the requisite number of events that were necessary to meet the standards of the Nike contract, Nike reduced Hicks’ base salary.<sup>10</sup> In March 2008, Hicks terminated his management agreement with HSI in writing, claiming that HSI violated California law by “failing to make appropriate filings and by failing to make required disclosures in the management agreement.”<sup>11</sup> Hicks further sought a declaration that the management agreement is void and unenforceable, and because his claims arose out of HSI’s conduct and did not relate to the interpretation or enforcement of the agreement, he is not subject to binding arbitration.<sup>12</sup> The agreement in issue provided, in part:

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<sup>4</sup> 2009 U.S. Dist. LEXIS 103138 (2009).

<sup>5</sup> *Id.* (citing *Prima Paint Corp. v. Flood and Conklin Mfg. Co.*, 388 U.S. 395 (1967)).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Hicks*, 2009 U.S. Dist. LEXIS 103138.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

**Dispute Resolution:** If ATTORNEY/AGENT and CLIENT are unable to reach an agreement regarding a dispute between them arising out of this retention, the dispute shall be subject to binding arbitration to be held in Orange County, California before a retired California Superior Court judge. Judgment on the arbitrator's award shall be final and binding and may be entered in any competent court.<sup>13</sup>

Hicks sought to avoid this provision specifically because he argued that his claims arose out of HSI's conduct, which Hicks argued resulted in harm to him in violation of tort law and state statute.<sup>14</sup> Hicks argued that his claims were not related to the interpretation or enforcement of the agreement with HSI.<sup>15</sup> The court stated that because some of Hick's claims depend on an interpretation of the contractual agreement, the claims are arbitrable.<sup>16</sup> The court additionally stated that because the arbitration provision was drafted in a way that was not limited only to disputes arising out of the agreement, but also to disputes arising out of the "retention which resulted in the agreement", Congress' intent requires the court to "liberally interpret the clause in favor of arbitration."<sup>17</sup> The Federal Arbitration Act (FAA) reflects Congress' intent to "provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause."<sup>18</sup> The FAA "embodies a clear federal policy in favor of arbitration,"<sup>19</sup> and "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."<sup>20</sup> Additionally, "a court, in construing a valid arbitration agreement under the FAA,

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<sup>13</sup> *Id.*

<sup>14</sup> *Hicks*, 2009 U.S. Dist. LEXIS 103138.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (citing *Republic of Nicaragua v. Standard Fruit Co.*, 937 F.3d 469, 475 (9<sup>th</sup> cir. 1991) (citing *Prerry v. Thomas*, 482 U.S. 483, 490 (1987))).

<sup>19</sup> *Hicks*, 2009 U.S. Dist. LEXIS 103138. (discussing 9 U.S.C. § 2).

<sup>20</sup> *Id.* (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983)).

applies ordinary principles of state contract law to determine whether the parties have agreed to arbitrate a particular dispute.”<sup>21</sup> The court in *Hicks*, noting that the parties have agreed to arbitrate disputes arising out of “retention,” states that this provision refers not only to “disputes involving interpretation and performance of the agreement, but also to disputes regarding the hiring process, disclosures, and other matters related to the contract.”<sup>22</sup> As the parties did not limit the disputes to “claims involving interpretation and performance of the contract, the factual allegations raised in the complaint need only touch upon matters covered by the contract.”<sup>23</sup> The matters on which the allegations must touch upon not only include issues regarding the formation of the contract, but also “any violations of law in connection therewith.”<sup>24</sup> Since *Hicks* did not argue that the arbitration clause was void or unconscionable, but that the entire agreement was void, the court states that an arbitrator, and not the court, must determine such claims.<sup>25</sup>

The *Hicks* case illustrates the need for arbitral clauses in endorsement contracts that are narrower in scope. If *Hicks* and HSI had limited the scope of the agreement to disputes regarding only the interpretation and performance of the agreement, not disputes arising out of the retention that resulted in the agreement, *Hicks* may have had a cause of action in the court. As many professional action sports athletes have endorsement agreements, a dispute resolution clause with a more limited scope may be more beneficial in order to protect the parties involved, allowing them to properly vindicate their claims.

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<sup>21</sup> *Id.* (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Hicks*, 2009 U.S. Dist. LEXIS 103138.

<sup>25</sup> *Id.*

*B. Olympic Arbitration*

Although Skateboarding and BMX are not currently Olympic sports, there is a possibility that they will be in the future due to their increasing popularity both nationally and internationally. When these sports become an Olympic sport, they will have to be recognized by Olympic Committees in their respective countries, and submit themselves to the constitution and bylaws of these committees, including their dispute resolution provisions. In the United States, these sports would need to be recognized by the USOC in accordance with the Ted Stevens Olympic and Amateur Sports Act.

Under the Ted Stevens Olympic and Amateur Sports Act (Stevens Act),<sup>26</sup> qualification for membership in the USOC is provided in the constitution and bylaws of the committee.<sup>27</sup> *Sections 220504(b)(1)-(4)* of the Act states that the committee “shall establish and maintain provisions with respect to its governance and the conduct of its affairs for reasonable representation of”<sup>28</sup> “amateur sports organizations recognized as national governing bodies,”<sup>29</sup> “amateur athletes actively engaged in amateur athletic competition or who have represented the United States in international amateur athletic competition within the preceding ten years,”<sup>30</sup> “amateur sports organizations that conduct a national program or regular national amateur athletic competition in two or more sports included on the program for the Olympic games,”<sup>31</sup> or “individuals not affiliated or associated with

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<sup>26</sup>The Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §§ 220501-220529 (1998). (This act governs the USOC, and puts for requirements and procedures for its member national governing bodies for individual sports).

<sup>27</sup> 36 U.S.C. § 220504(a).

<sup>28</sup> *Id.* § 220504(b).

<sup>29</sup> *Id.* § 220504(b)(1).

<sup>30</sup> *Id.* § 220504(b)(2).

<sup>31</sup> *Id.* § 220504(b)(3).

any amateur sports organization who, in the committee's judgment, represent the interests of the American public in the activities of the corporation."<sup>32</sup>

Under the Act, the committee shall establish and maintain provisions in its constitution and bylaws for the "swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic games...world championship competition, or other protected competition as defined in the constitution and bylaws."<sup>33</sup> The Act states that the committee "shall hire and provide salary, benefits, and administrative expenses for an Ombudsman for athletes"<sup>34</sup> that shall "provide independent advice to athletes at no cost about the applicable provisions of the act and the constitution and bylaws of the committee...with respect to resolution of any dispute"<sup>35</sup> as discussed in the previous section, assist in mediating any such disputes,<sup>36</sup> and report to the Athletes' Advisory Council on a regular basis.<sup>37</sup> A party that is aggrieved by a determination of the committee, under *section 220527* (Complaints against national governing bodies) or *section 220528* (Applications to replace an incumbent national governing body) of the act, "may obtain review of the claims by any regional office of the American Arbitration Association ("AAA")."<sup>38</sup> The arbitral clause of the act provides the following procedures: that the "demand for arbitration must be submitted within thirty days of the committee's determination,"<sup>39</sup> that "upon receipt the AAA must serve notice to both parties and immediately proceed with arbitration according to their commercial rules,"<sup>40</sup> that "the panel shall consist of three arbitrators unless the parties agree to a lesser

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<sup>32</sup> 36 U.S.C. § 220504(b)(4).

<sup>33</sup> *Id.* § 220509(a).

<sup>34</sup> *Id.* § 220509(b)(1).

<sup>35</sup> *Id.* § 220509(b)(1)(A).

<sup>36</sup> *Id.* § 220504(b)(1)(B).

<sup>37</sup> 36 U.S.C. § 220504(b)(1)(C).

<sup>38</sup> *Id.* § 220529(a).

<sup>39</sup> *Id.* § 220529(b)(1).

<sup>40</sup> *Id.* § 220529(b)(2).



number;”<sup>41</sup> that “the AAA shall select the site unless the parties agree to the use of another site;”<sup>42</sup> that “the arbitration hearing shall be open to the public;”<sup>43</sup> that “the decision shall be by majority vote unless the parties require concurrence of all arbitrators;”<sup>44</sup> “relaxed conformity to the legal rules of evidence;”<sup>45</sup> “settlement of the dispute before a final award;”<sup>46</sup> a final and binding decision;<sup>47</sup> and “a reopening of hearings.”<sup>48</sup> When either Skateboarding or BMX have a national governing body recognized by the USOC as eligible for membership, these sports would not only be required to follow the constitution and bylaws of the committee, but also the provisions for dispute resolution, including arbitration, as provided for by the Act.

If, after being recognized as eligible for membership by the USOC, the member and the committee have agreed to arbitrate their disputes before the AAA, the arbitration panel, not the courts, shall interpret the terms of the parties’ agreement as discussed in the United States Court of Appeals for the Second Circuit decision in *Jacobs v. USA Track & Field and United States Anti-Doping Agency*.<sup>49</sup> In *Jacobs*, a “world-class” track athlete appealed from the denial by the United States District Court for the Southern District of New York of her petition to compel arbitration regarding a dispute with defendants regarding a doping violation and a suspension from the 2004 Olympic Games.<sup>50</sup> The parties agreed to arbitrate their dispute, but there was a disagreement over which two sets of rules of the AAA, Commercial Rules or Supplementary Procedures, governs the arbitration.<sup>51</sup> Although the parties agreed that it is for the arbitrators to decide

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<sup>41</sup> *Id.* § 220529(b)(2)(A).

<sup>42</sup> 36 U.S.C. § 220529(b)(2)(B).

<sup>43</sup> *Id.* § 220529(b)(2)(C).

<sup>44</sup> *Id.* § 220529(b)(3).

<sup>45</sup> *Id.* § 220529(b)(5).

<sup>46</sup> *Id.* § 220529(c).

<sup>47</sup> 36 U.S.C. § 220529(d).

<sup>48</sup> *Id.* § 220529(e).

<sup>49</sup> 374 F.3d 85 (2d Cir. 2004).

<sup>50</sup> *Id.* at 86.

<sup>51</sup> *Id.*

which set of rules applies, each set of rules provides different methods for selecting arbitrators.<sup>52</sup> Therefore, Jacobs petitioned for a court order, pursuant to section four of the Federal Arbitration Act (“FAA”), to compel the arbitration to proceed under a particular set of AAA rules that the AAA has determined are inapplicable.<sup>53</sup>

Jacobs, a member of USA Track and Field (“USATF”), an organization recognized by the USOC as the national governing body for track and field in the United States, has agreed to follow the rules and regulations of the USATF and USOC.<sup>54</sup> The United States Anti-Doping Agency (“USADA”) is the “independent anti-doping organization recognized by the USOC for Olympic Sports in the United States, and is responsible for managing the testing of athletes to determine the presence of prohibited substances.”<sup>55</sup> After a competition in 2003, Jacobs provided a urine sample to the USADA and tested positive for tetrahydrogestrinone (“THG”), an anabolic steroid that is prohibited under anti-doping rules.<sup>56</sup> She was then charged with a doping violation and threatened with sanctions, which included a “four-year period of ineligibility in the Olympic Games, trials, or qualifying events.”<sup>57</sup> Jacobs, denying the charges, filed a Demand for Arbitration with the New York Regional Office of the AAA in order to compel arbitration under the Commercial Rules.<sup>58</sup> The USADA then wrote to the AAA stating that the “USADA considers [petitioner’s] Demand for Arbitration as notice that [she] contests the sanction [proposed by USADA] and requests a hearing under the USADA Protocol and applicable AAA Supplementary Procedures for Arbitration Initiated by USADA.”<sup>59</sup> The parties then sent briefs to the AAA on the

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* (citing Federal Arbitration Act, 9 U.S.C. §§ 1-307).

<sup>54</sup> *Jacobs*, 374 F.3d at 87.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Jacobs*, 374 F.3d at 87.

issue of which rules the arbitration should proceed under.<sup>60</sup> The AAA then notified Jacobs that arbitration would proceed under the Supplementary Procedures.<sup>61</sup> Jacobs then filed a petition to compel arbitration in the District Court seeking to compel arbitration under the Commercial Rules.<sup>62</sup> The District Court held that it lacked jurisdiction and denied the petition.<sup>63</sup> The Court reviewed USOC and USATF bylaws and regulations and concluded that “the USATF has conflicting requirements for the adjudication of alleged doping offenses...”<sup>64</sup> The Court then observed that “both the Commercial Rules and Supplementary Procedures...include precisely the same rule with respect to the question of whether the Court or the arbitrator determines questions of arbitrability.”<sup>65</sup> Both sets of rules provide:

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
- (b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.<sup>66</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 88.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Jacobs*, 374 F.3d at 88.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* (citing Commercial Rules, Rule 7; Supplementary Procedures, Rule 8).

The Court stated that whichever set of rules applied, “the parties have agreed that all questions of arbitrability, including the validity and scope of the arbitration agreement are reserved for arbitral rather than court determination” in its conclusion that it lacked jurisdiction.<sup>67</sup> On appeal, Jacobs argues that the District Court should have granted her petition to compel arbitration under the Commercial Rules.<sup>68</sup> Although Jacobs agrees that it is for the arbitrators to decide which set of rules to apply, she argues that “the arbitrators must be selected initially under the Commercial Rules.”<sup>69</sup> The Second Circuit reviewed the District Court’s denial of the petition *de novo*.<sup>70</sup>

Jacobs sought to compel arbitration pursuant to Section 4 of the FAA, which provides:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court...for an order directing that such arbitration proceed in the manner provided for in such agreement...The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.<sup>71</sup>

Under the FAA, “the role of courts is ‘limited to determining two issues: i) whether a valid agreement or obligation to arbitrate exists, and ii) whether one

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Jacobs*, 374 F.3d at 88.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* (citing 9 U.S.C. § 4).

party to the agreement has failed, neglected or refused to arbitrate.”<sup>72</sup> In *Jacobs*, the parties did not refuse to arbitrate; therefore the Court stated that it “need not interpret the terms of the parties’ agreement.”<sup>73</sup> The fact that the USATF and the USADA, before the AAA, objected to Jacob’s Demand for Arbitration did not constitute a “refusal to arbitration.”<sup>74</sup> Since there was no refusal to arbitrate, the Court states that Jacobs “cannot use Section 4 as a vehicle to seek review of the AAA’s decision about how to proceed with the arbitration process.”<sup>75</sup> Therefore, the Second Circuit concluded that the District Court correctly denied her petition to compel arbitration.<sup>76</sup>

The *Jacobs* case illustrates that once an athlete is a participant in a sport that has a national governing body recognized by the USOC and the member and the committee have agreed to arbitrate their disputes before the AAA, the arbitration panel, not the courts, shall interpret the terms of the parties’ agreement.<sup>77</sup> This has important implications for any sport that wishes to be recognized by the USOC. When Skateboarding and BMX form gain their respective national governing bodies that are recognized by the USOC, these sports will also have to submit to the dispute resolution procedures of the USOC, and an arbitration panel, not the courts, will interpret their agreements.

In *Lindland v. USA Wrestling Association, Inc.*,<sup>78</sup> a case involving athletes that compete individually similar to the athletes of action sports, the United States Court of Appeals for the Seventh Circuit held that if the USOC is in “active concert or participation with a governing body,” it is bound by an order or injunction by the court regarding arbitration awards.<sup>79</sup> Matt Lindland, a Greco-

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<sup>72</sup> *Id.* (citing *Shaw Group Inc. v. Triplefine Int’l Corp.*, 322 F.3d 115, 120 (2d Cir. 2003) (quoting *PaineWebber Inc. v. Bybyk*, 81 F.3d 1193, 1998 (2d Cir. 1996))).

<sup>73</sup> *Id.*

<sup>74</sup> *Jacobs*, 374 F.3d at 88.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> 227 F.3d 1000 (7th Cir. 2000).

<sup>79</sup> *Id.* at 1006.

Roman wrestler, wrestled Keith Sieracki in two championship matches to determine who would gain a spot on the Olympic team for the 2000 Summer Olympic Games.<sup>80</sup> Sieracki won the first match 2-1 and Lindland won the second match 8-0.<sup>81</sup> Lindland, under *section 220529(a)*, a dispute resolution provision of the Ted Stevens Olympic and Amateur Sports Act, protested the result of the first match through USA Wrestling, which is the governing body of amateur wrestling in the United States.<sup>82</sup> The arbitrator for this dispute ordered that Sieracki and Lindland enter into a rematch.<sup>83</sup> As the winner of the rematch, Lindland was to be the representative in the Olympic Games, but USA Wrestling did not accept that outcome and instead told the USOC to send Sieracki as its nominee, and to list Lindland as an alternate in the event of injury.<sup>84</sup> Lindland then sought confirmation of the arbitration award under section nine of the FAA.<sup>85</sup> The Seventh Circuit in that case held that Lindland is entitled to relief, which means being entitled to be the USA Wrestling nominee.<sup>86</sup> USA Wrestling defied this order, as it had defied the arbitration award. The reasoning given by USA Wrestling for defying the order was that a second arbitrator, in an arbitration proceeding initiated by Sieracki, directed USA Wrestling to send Sieracki as its nominee based on the results of the first match, in which Sieracki had won.<sup>87</sup> The court then issued a *writ of mandamus* requiring that the district court ensure that the first arbitration award was implemented “immediately and unconditionally,” as USA Wrestling had decided to follow the second arbitration reward, which was un-reviewed, rather than following the decision of a federal court confirming the first award.<sup>88</sup> Although USA Wrestling had agreed to comply with the court order, the USOC refused to

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<sup>80</sup> *Id.* at 1001.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 1002.

<sup>83</sup> *Lindland*, 227 F.3d at 1002.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Lindland*, 227 F.3d at 1002.

send Lindland as its nominee, because it had already sent Sieracki as its nominee to the International Olympic Committee (IOC).<sup>89</sup> Lindland returned to court to compel the USOC to send his name as the nominee instead of Sieracki, and Sieracki responded by asking a different district court to confirm the second arbitration award.<sup>90</sup> The proceedings arising out of the dispute were consolidated and transferred to the Northern District of Illinois, which ordered the USOC to request that the IOC accept Lindland as its nominee instead of Sieracki.<sup>91</sup> The USOC complied with the order and Sieracki appealed, once again seeking to have the second arbitration award confirmed.<sup>92</sup> Although the deadline had passed for changes to the roster of Olympic teams, since the IOC has already accepted the substitution of Lindland for Sieracki after the deadline, the court stated that it would still address whether or not to confirm the second arbitration award.<sup>93</sup> The confirmation of the award would substitute Sieracki for Lindland once again, and the court states that since the USOC was willing to make the first change after the deadline, it would impliedly accept a second change as well.<sup>94</sup>

The court stated that the second arbitration award could not be confirmed because the second arbitrator has directed USA Wrestling not to implement the decision of the first arbitrator. As the first award had already been enforced, the court could not enforce the second award because the enforcement of incompatible awards is precluded under *Consolidation Coal v. United Mine Workers*.<sup>95</sup> Even if the second arbitration award had been the only award, the award could not be confirmed because the second arbitrator acted *ultra vires* and violated the Commercial Rules of the American Arbitration Association.<sup>96</sup> The Stevens Act, under *section 220529(a)*, does not authorize a second arbitration proceeding

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Lindland*, 227 F.3d at 1002.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* (citing *Consolidation Coal v. United Mine Works*, 213 F.3d 404 (7th Cir. 2000)).

<sup>96</sup> *Id.* at 1003.

regarding the “propriety of another arbitrator’s decision.”<sup>97</sup> Section 220529(a) states:

A party aggrieved by a determination of the corporation under section 220527 or 220528 of this title may obtain review by any regional office of the American Arbitration Association.<sup>98</sup>

As the first arbitrator is not considered a corporation under the Stevens Act,<sup>99</sup> his determination was not arbitrable under the Act.<sup>100</sup> Additionally, the first arbitrator did not render his decision under *section 220527*, dealing with remedies that athletes have within their governing bodies, or under *section 220528*, dealing with applications to replace national governing bodies.<sup>101</sup> Therefore, a review of the first determination could not be obtained under the act, and the second arbitration award was not entitled to confirmation.<sup>102</sup>

The *Lindland* case illustrates issues of dispute resolution that can arise within national governing bodies, as well as the USOC, in Olympic team selection. This case could have very important implications for action sports athletes that wish to compete in the Olympic games, not only in terms of the proper selection procedures for national governing bodies, but for the dispute resolution procedures to follow under the USOC and the Stevens Act.

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<sup>97</sup> *Id.*

<sup>98</sup> *Lindland*, 227 F.3d at 1004 (citing 36 U.S.C. § 220529(a)).

<sup>99</sup> *Id.* (citing 36 U.S.C. §220501).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Hicks v. HSInternational Sports Mgmt.*, 2009 U.S. Dist. LEXIS 103138.



### III. DISCUSSION

#### A. *Endorsement Contracts*

The *Hicks* case describes a need to narrowly tailor the scope of an arbitration clause in order to avoid problems such as the problems experienced by Hicks.<sup>103</sup> In that case, Hicks brought several claims against his agent. Hicks argued that because some of the claims do not involve the interpretation of the agreement, the claims are not arbitrable. The Court, however, stated that because the arbitration provision was drafted in a way that was not limited only to disputes arising out of the agreement, but also disputes arising out of the retention that resulted in the agreement, Congress' intent required the court to liberally interpret the clause in favor of arbitration.<sup>104</sup> The *Hicks* case illustrates the need for management agreements and endorsement contracts to be drafted in such a way that limits the scope of the issues that can be brought before an arbitrator or before the courts.<sup>105</sup> This is particularly applicable in the world of Skateboarding and BMX as some of these athletes have procured major endorsement deals with major companies. Additionally, some of these athletes also have personal agents representing them to these companies. If the agreements between the athlete and their agents, or the athlete and the company they are endorsing, do not limit what can be submitted to arbitration or to the courts, one of the parties may not be able to properly vindicate their claims or receive the remedies in which they seek.<sup>106</sup>

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

*B. Olympic Arbitration*

If either Skateboarding or BMX had a national governing body recognized by the USOC as eligible for membership, which neither have currently, they would not only be required to follow the constitution and bylaws of the committee, but also the provisions for dispute resolution including arbitration as provided for by the Act. If, after being recognized as eligible for membership by the USOC, the member and the committee have agreed to arbitrate their disputes before the AAA, the arbitration panel, not the courts, shall interpret the terms of the parties' agreement as evidenced by the Court in the *Jacobs* case. Skateboarding and BMX have potential to be included as an Olympic sport, as the action sport of snowboarding is currently an Olympic sport. Both Skateboarding and BMX have gained international popularity and each sport has superstar athletes. With the potential to be an event in the international Olympic games, Skateboarding and BMX each need to have a national governing body to be recognized by the USOC. Following the recognition as a national governing body, these sports would be required to form their own rules and regulations as well as follow the constitution and bylaws of the USOC and the provisions of the Ted Stevens Amateur and Olympic Sports Act, including the provisions related to dispute resolution and arbitration.

IV. CONCLUSION

Skateboarding and BMX would benefit from having arbitration agreements in the governing bodies of these sports, in the competitions in which the athletes of these sports compete, and in the endorsement agreements the athletes of these sports contract into. With the growing popularity of these sports on an international level, the issues described above will undoubtedly come into play. As the popularity continues to grow, the need for agents for many of its

athletes to assist in the garnishing of endorsement contracts will also grow. Additionally, as the popularity of these sports continues to rise, potential issues arising in dispute resolution, including arbitration, will also increase. The increasing need for dispute resolution provisions in the contracts of these athletes will require a greater understanding of the arbitration process in order to better protect and benefit all of the parties involved.